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Transcriber's Office

Natural Resources Committee
January 18, 2012

[LB713 LB873 LB877]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 18, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB713, LB877, and LB873. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to introduce my colleagues that are members of the committee as we go forward today. To my far left or your right we have Senator Jim Smith from Papillion; we have Senator Ken Haar's spot, but he's actually sitting in the crowd. He has the first bill up, from Malcolm. And then we have Senator Ken Schilz, who is also the Vice Chairman of the committee, is from Ogallala. We have Laurie Lage who is the legal counsel for the Natural Resources Committee. Now to my immediate right we have Senator Annette Dubas from Fullerton; and then we have Senator Tom Carlson from Holdrege. Senator Beau McCoy from the Elkhorn, Omaha area will be joining us in a little while. At the end of our table here we have Barb Koehlmoos, she is the committee clerk. As you come forward, if you have anything you'd like to hand out and that's where you're going to turn in your testimony sheet as you come forward. If you're here to testify, we ask that you...in the corners of the room you'll find a green piece of paper. We ask you to fill that out in its entirety. It allows us to keep a more accurate record of today's hearings. As you come forward to testify, please give that to Barb. It helps us keep an accurate record. If you're here today and you want to be on the record as being here but you don't plan to testify, you'll see there's another spreadsheet-looking form in the corners. You can fill out your name and address and whether you support or oppose and what bill it is. So you have that option too. Senator Mark Christensen from Imperial has joined us. As you come forward to testify today, we do ask that you bring the green sheet and give it to Barb. And Senator Beau McCoy has joined us as well. We ask you, if you have 12 copies of anything you'd like to hand out, please give that to Barb and our pages will help you hand that out as needed. We do remind you that anything you do give to the committee to look at we are going to keep for the record. So if you have a family photo that you want us to see but you want to keep, don't give it to us. Show it to us from the table and then allow yourself to be available after the hearing to allow senators to look at it in more detail, if they would like to. But I do remind you if you do give it to us we are going to keep it for the official record. When you come up to testify we ask that the first thing you do is say and spell your name. That also helps us keep a more accurate record of today's events. From there, we ask you right now if you all look at your cell phone and turn those off so you don't disrupt the person that is testifying, as it's their moment to tell us their thoughts and opinions of a bill. We do use the light system in the Natural Resources Committee.

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You do get five minutes to testify. The light will be green when you start. It will remain green. When you have one minute left it will go to orange, and then when it turns red, after your five minutes, we ask that you stop your testimony. And just as a word of experience, if you get caught in the middle of something and your time is out, a senator usually will ask you a question to allow you to finish. So don't...make that feel like that's going to be a big obstacle. We also ask that no displays of support or opposition to anything someone says. This is their opportunity to talk. If you would like to share your thoughts as we go forward you'll have that opportunity at that time. So with that, we are going to take the bills. We're going to do LB713, then LB877, then LB873. So at this time we'll open the hearing on LB713. And, Senator Haar, welcome.

SENATOR HAAR: (Exhibits 1 and 2) Thank you very much. Members of the committee, my name is Ken Haar, K-e-n H-a-a-r, and I'm the senator from Legislative District 21. The bill today that I'm proposing has to do with a situation in Omaha where somebody has installed some solar panels on their roof and there was an easement for the neighborhood...oh, I'm sorry, a covenant for the neighborhood saying that that wouldn't be allowed. The first page I handed out has 66-901, legislative findings, at the top. And I just thought this was really interesting because going way back this says it better than I could, summarizes the four reasons why the use of solar energy and wind energy in Nebraska is encouraged by the Legislature. And you can read that, so I won't read it again. Then you notice the thing I underlined with the squiggly, this part of the law also talks about "protecting access to solar skyspace." And really, that's what this bill is about. Section 66-913 talks about "encouragement of solar energy." And then 66-914 is kind of the "may," the fact that local people may use their authority to grant variances and so on. So we've already established the intent of the Legislature to use solar energy and wind energy for the reasons stated. The second, the colored graph I gave you is the state solar access laws. And you notice Nebraska currently, and you can see from what I handed, gives local authorities the ability to pass laws, giving, as they say on here, access to solar skyspace. There is also a provision in Nebraska that you can buy an easement for your solar. So that, let's say, you put up solar panels and your neighbor didn't...or you could buy an easement then from your neighbor, whatever, to give you continued access to sun. What the bill is about today is that it would give...that it would declare that covenants that restrict solar panels, just say you can't have them, would go away. There is some precedence for this. For example, the Telecommunications Act of 1966 makes covenants against satellite dishes unenforceable. There was a time everybody thought satellite dishes were really ugly and shouldn't go up. And it also includes TV antennas. There was a Florida law passed to prevent prohibitions on landscaping that use less water. So apparently, in Florida there were places, there were covenants in neighborhoods that required them to have grass that needed water. And so if someone would put in rock instead of grass, so they wouldn't use so much water, that was against the covenants. And so that's now illegal in Florida. And then, of course, this goes way back. But racial covenants are unenforceable under federal Shelley v. Kraemer, held that covenants that excluded people on the basis of race were

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unenforceable under the 14th Amendment. And I simply give you that background. There is a precedent, when there's a public purpose such as we've declared through our laws about solar, the benefit of solar and wind, that this bill would exclude those kinds of covenants. I believe the public purpose, it creates jobs, encourages distributive generation, which is small generation of electricity done by individuals. And it encourages I guess what has begun to be called megawatts, the whole thing of generating or saving electricity so you don't have to pull it off the grid. Again, the first thing I handed out shows the intent of the Legislature over time to protect access to solar skyspace. And I feel that my bill simply strengthens and clarifies that. I'll just mention, because it will probably come up, that there are some things about the city being able to, or a city or county, whatever, being able to remove trees. And we're going to have to clarify that. Obviously, it doesn't mean that if you put up a solar panel and your neighbor has a huge maple tree blocking your solar access, they're not going to cut that down. That would not be reasonable. So in committee amendments we plan to clarify the whole issue around cutting trees. I had to do that so my wife wouldn't show up here today to testify against the bill. (Laughter) So if you have any questions, I'd be happy to answer them. [LB713]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Christensen. [LB713]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. Would you expound on the last comment on trees, because as I was reading this, provide for removal and relocation of trees, you got that big oak tree, it's the only tree they got, but it's shading the south side of this person's house. How is this going to be handled? [LB713]

SENATOR HAAR: Well, again, we have to go back and clarify that. There is no way, for example, it would not be reasonable, if you have a big oak tree and I want to put up solar panels, to say I'm going to cut down your oak tree. This would, for example, give cities the ability, let's say, in the right of way, between the sidewalk and the street, if they saw it as a public purpose to remove a tree. We'll clarify that. One case where I could see, and some of this might eventually, as with any kind of fences and all that, be settled in court. But if I put up solar panels on my roof and you didn't like me and so you grow a tree (laugh) that would eventually block my solar panels, and I think there would be some redress that could happen. So I will... [LB713]

SENATOR CHRISTENSEN: Okay, because that was my concern whether I could just go put one on my house and cut down your only tree. And, you know, I think that's overstepping the...I'd be glad to work with you. [LB713]

SENATOR HAAR: You bet. And we'll work on that in committee. [LB713]

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SENATOR LANGEMEIER: Senator Smith. [LB713]

SENATOR SMITH: Thank you, Senator Langemeier. Senator Haar, along those same lines, let's say I'm new to the area. You've been there for awhile, you decided to put solar panels on your home. I move into the neighborhood, I buy this house. And, you know, they didn't have any trees really, they never did anything with their landscaping. [LB713]

SENATOR HAAR: Um-hum. [LB713]

SENATOR SMITH: I decide to plant a tree. Am I restricted from doing that on my own property? [LB713]

SENATOR HAAR: No, no. And we'll... [LB713]

SENATOR SMITH: But that tree may grow to block your shade (sic). [LB713]

SENATOR HAAR: Yeah, I...and again, we'll explore this whole area of the trees, which kind of muddies this up a bit. But I could certainly see a case if you plant a tree and such that it grows up and starts to block my solar panels, that that might be a reason to ask you to trim the tree or something of that sort. [LB713]

SENATOR SMITH: And then within the individual cities, having sat on planning commissions for a number of years for a couple of cities, you know, each city has its own master plan, oftentimes they'll have zoning requirements. Even individual neighborhoods have covenants. And inside some of those zoning requirements and master plans of the cities they may have trees on right of ways, on city property to beautify the city, maybe it's a historical district. And some of those old homes they come in and they put solar panels there, it sounds like this has the potential at the very least to conflict with city master plans, zoning ordinances and certainly neighborhood covenants. [LB713]

SENATOR HAAR: Um-hum. Well, certainly with neighborhood covenants and this bill says there can't be a covenant that just excludes solar panels. [LB713]

SENATOR SMITH: Okay. [LB713]

SENATOR HAAR: But the cities or counties, whatever, in their zoning would still have the ability, according to this, to set restrictions. And for example, the city of Lincoln has some zoning laws now when it comes to wind turbines and they can't be, you know, more than so high and so on. So again, those areas of "reasonable" come into play here. But according to this bill, if it's passed you can't have a covenant that just outright says no solar panels. [LB713]

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SENATOR SMITH: So would you then see a neighborhood...each neighborhood would have to rewrite their covenants to allow for solar panels because then within those covenants they would want to have some control over how large they are, what color they are, can they be neon green, do they have to fit within...I mean, it becomes a real slippery slope as to how far you push down that they have to reform their covenants. [LB713]

SENATOR HAAR: Um-hum. And I guess I'm not familiar with the whole process of covenants. Does that mean that you'd have to rewrite your covenants or if there was a covenant against solar panels it simply no longer would be valid? [LB713]

SENATOR SMITH: So you could perceive this as being a...I could put in a neon colored solar panel, that's, you know, does not fit in with the looks of the neighborhood or the community and it could be a real eyesore. And that would be all right for me to be able to do that? [LB713]

SENATOR HAAR: A good question. And I'll look into that. But I don't think they make...you're just using that as an example, of course, a neon solar panel, (laugh) I don't think there is such a thing. But you know as solar technology evolves we're...in fact I think there are now even in production some solar panels that just are like your shingles, you know, they serve dual purposes as shingles. And again, within this bill it talks about the locality being able to restrict on a reasonable basis. [LB713]

SENATOR SMITH: All right. Thank you. [LB713]

SENATOR HAAR: Yep. [LB713]

SENATOR LANGEMEIER: Senator Carlson. [LB713]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Haar, I think you said, is this bill based on one incident that happened in Omaha? [LB713]

SENATOR HAAR: That's how it came to my desk. But as, you know, as this industry develops, and in fact in the first sheet I handed out it talks about protecting, let's see if I can find that, the previous law actually talks about the fact that, yeah, we're going to have to start developing laws around this. So there was a recognition early on that this is going to require some laws. [LB713]

SENATOR CARLSON: Well, and I'm uncomfortable...I understand why it's done. I understand why you bring the bill. [LB713]

SENATOR HAAR: Um-hum. [LB713]

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SENATOR CARLSON: We had another bill that was withdrawn this session because it came about as the result of one incident. And the senator decided to withdraw the bill. So I'm uncomfortable when something is based on one incidence. And I understand why it comes about. And I'm also uncomfortable when you have a given area and the residents in that area knew coming in that the builder had certain requirements that they had to go by. And then we bring in a law that just goes right over the top of what the majority of people want that live in that area. I'm uncomfortable with that. And I'll bring in another thing that I'm uncomfortable with, it's not what this bill is about, but if I have a nice home and nice outbuildings on the corner of my quarter of land where the pivot doesn't hit, and my neighbor next door on the corner that's right across the property line puts up a wind tower. There isn't anything I can do about it, is there? [LB713]

SENATOR HAAR: Under current law, I don't believe so, yeah, yeah. [LB713]

SENATOR CARLSON: I know. I don't think so either. [LB713]

SENATOR HAAR: But counties and cities are starting to recognize that this can be a problem and put it into their zoning laws in terms of placement and also height and things like that. [LB713]

SENATOR CARLSON: Well, I think that's pretty important. And I think this is too. But appreciate you bringing forth the concern. [LB713]

SENATOR HAAR: Sure. Well, and to quote some of the testimony this morning, times change. (Laugh) And somebody, I can't remember who it was, said, times change and certainly the whole area of distributive generation, where people are generating their own electricity, is bringing changes into society. And I thought it was very interesting in Florida where that covenant said you have to have green grass that you water, you know. Then over time it's...we've recognized that water is scarce. And so people who are trying...who are putting rock down, you know, and again I'm not sure if it would have said you can't put down neon rock or not. But people who put down rock in their yards were simply adapting to a change in situation. And I think that's what this is about as well. [LB713]

SENATOR CARLSON: Okay, thank you. [LB713]

SENATOR HAAR: You bet. [LB713]

SENATOR LANGEMEIER: Very good. Seeing no other questions, well done. [LB713]

SENATOR HAAR: Thank you very much. [LB713]

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SENATOR LANGEMEIER: Before we go forward, I'd like to introduce, if we have anything to hand out, we have two pages that are going to help us: Brian Eulie from Omaha, who is a student at UNL, is going to be helping us; and Alex Wunrow from Los Angeles, California, who's a student at Southeast Community College. They'll be our two pages for the year through Natural Resources. You have heard the opening on LB713. Now we'll take proponents of LB713. Welcome. Good afternoon. [LB713]

RICK CUNNINGHAM: Good afternoon, Chairman Langemeier, committee members. My name is Rick Cunningham, that's R-i-c-k, last name C-u-n-n-i-n-g-h-a-m. I'm the planning director for the city of Omaha. Appreciate this opportunity to come before you today and just share our perspective. Let me be up front, we support this legislation because it is in lockstep with our goals, objectives, in fact our master plan within the city of Omaha. In fact, in 2008, a journey began in the city of Omaha that evolved hundreds of citizens, representatives from industry, public and private, representatives, 4,000 volunteer hours were logged in this effort, a grass-roots effort that resulted in a document called "Environment Omaha." In December, in fact, December 14, 2010 the city council of the city of Omaha voted 7 to 0 to adopt that document as part of our city master plan. And it became the first environmental element of the city of Omaha master plan. That document is very comprehensive, it has over 600 recommendations. They are in five areas--the natural environment, urban form and transportation, building construction, resource conservation, and community health. The five goals under resource conservation seek to help our city to conserve its natural and material resources and capitalize on the potential of its human resources. The main goal of the natural resource section of our master plan is to help the city of Omaha conserve its natural and material resources. And under energy, in particular the goal is to meet energy demand by continuously improving the efficiency and encouraging the supply of diversified, renewable and sustainable energy sources and systems. One of the measurements under that section is to increase the use of renewable energy in the city of Omaha 20 percent by 2030, and then continually to shift our source of energy production to renewable at least 20 percent every ten years. So it is a strong element of our master plan to encourage the citizens of Omaha to seek renewable and sustainable sources of energy. It is not a requirement, it is not law, but it is strongly encouraged. Subsequent to adopting this master plan, we've undertaken the comprehensive energy master planning effort, in fact, funded through some of our block grant money, or I should say our...I've forgotten what the name of that stuff was now, American Recovery and whatever, ARRA grant money. And that effort is a comprehensive energy managed plan. Part of it is that the city will itself with its own facilities walk the talk, seeking to use alternate and renewable energy sources, energy conservation elements integrated, and save as much energy as possible. In fact, we are about ready to initiate a performance contract on 25 facilities within the city of Omaha to do just that. Another part of that contract, what the consultant wants to look at, basically impediments to that to meeting the goals of our master plan. And in fact in that study our consultant reviewed possible barriers to meeting our goals and objectives in our master plan. Solar access, the

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issues with covenants and other potential restrictions on the use of solar panels was one of those barriers. So this legislation would help to remove one of those barriers to the potential installation of solar. Solar can be both hot water solar, hot air or photovoltaics. One mention was talking about the fact that now solar panels are actually integrated in shingles, can be integrated in the shingles of a roof so that the technology is certainly catching up and surpassing some of our wildest imaginations at this point. So with that, I'm available for any questions. I guess I would say also, we're talking about probably more of an active system when we talk about solar collectors. But you might think about access to passive solar gain, and that is the orientation of your house, the orientation of your windows and so forth and how that works. That is basically step one, 101, design your house so that it takes advantage of the passive solar benefits. And then go to the active solar panels and so forth. So you might consider that also. I will say that I lived in Overland Park, Kansas for a number of years. And at that point in time there was a very strong craze to have covenants requiring that you have single shake roofs. In fact I lived in one of those communities. And at one point the city began to experience a high rate of fires and other problems with shingles...wood shingled roofs. And they did indeed adopt an ordinance which removed that from covenants. But it did indicate, as this legislation does, that you still have the right, the capability to provide criteria of how that would be installed so that it was less intrusive, obtrusive in the community, such as angles and that it be flat with the roof, those kinds of things that you can integrate into as not as being prohibitive, but basically indicating how it can be done within your community. This bill does say that, so I believe that that is covered. [LB713]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Cunningham?
Senator Dubas. [LB713]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Cunningham, for coming forward. And I think you may have just started to answer the question I wanted to ask. And that's in regard to covenants. And I have no real understanding of how covenants work. And if you have county or city zoning, a covenant cannot go against that county or city zoning, is that correct? [LB713]

RICK CUNNINGHAM: Actually, covenants are contracts. And so we've had a number of discussions in the city of Omaha about just this. And our legal has indicated that we could not pass an ordinance that would basically say a covenant cannot be enforced because it's basically a contract. As I think somebody indicted, when you move in and you buy a piece of property you're basically entering, through the covenants, a contract with the seller and the developer as far as what you can and cannot do. And it's not part of our city laws though. [LB713]

SENATOR DUBAS: Okay. So if a covenant was in conflict with city or county zoning, how is that handled? [LB713]

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RICK CUNNINGHAM: You know, we didn't get into that. And it probably would depend on in which way it was in conflict. It was interesting, somebody indicated about the race. I have purchased 13 acres in Virginia and I've looked at the covenants. And there is a covenant in there about African-Americans, it doesn't say that, owning property. Thankfully that is against the law, even though it still is in my deed. [LB713]

SENATOR DUBAS: Thank you very much for the information. [LB713]

SENATOR LANGEMEIER: Are there any other questions? Senator Carlson. [LB713]

SENATOR CARLSON: Thank you, Senator Langemeier. I think, Mr. Cunningham, as you were going through this issue, you indicated that your environmental plan in the city of Omaha is voluntary? [LB713]

RICK CUNNINGHAM: Absolutely. It's part of our master plan. The master plan, while it's enacted by an ordinance, it is a vision for our city. It is not, for example, our building code or zoning ordinances. However, it does inform that process. As we go forward adopting new ordinances and so forth we look back to the master plan, hence the environmental element of our master plan, just as we do to our transportation element, our land use element and the other elements of our master plan, we look back to those in order to put together what we might pass as an ordinance. [LB713]

SENATOR CARLSON: What you might pass, but that means it is voluntary. [LB713]

RICK CUNNINGHAM: Yes. [LB713]

SENATOR CARLSON: It's suggested but it's voluntary. I don't see anything wrong with that. But you're wanting us to pass legislation that would make it mandatory. [LB713]

RICK CUNNINGHAM: This does not make solar panels mandatory. It...what it does is it says that... [LB713]

SENATOR CARLSON: Well, it's a different type of mandatory. [LB713]

RICK CUNNINGHAM: ...you cannot restrict it, I mean, prohibit. You can restrict it, you can determine how it is done aesthetically within your community. You just can't say you shall not have solar panels. That's how I read this legislation. [LB713]

SENATOR CARLSON: Well, that's what the bill says. [LB713]

RICK CUNNINGHAM: Right. [LB713]

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SENATOR CARLSON: But your policy in Omaha doesn't say that. It's... [LB713]

RICK CUNNINGHAM: Our policy... [LB713]

SENATOR CARLSON: ...you would encourage solar panels, but... [LB713]

RICK CUNNINGHAM: ...we encourage it, yes. [LB713]

SENATOR CARLSON: ...it's not mandatory. [LB713]

RICK CUNNINGHAM: It is not mandatory, no. [LB713]

SENATOR CARLSON: Okay. [LB713]

RICK CUNNINGHAM: It is strongly encouraged. In fact, when we do our "preapp" letters now we have a line that encourages the applicant to consider alternative energy sources in their development. But it is not a mandatory deal. [LB713]

SENATOR CARLSON: Okay, all right. Thank you. [LB713]

SENATOR LANGEMEIER: Are there any other questions? Senator Smith. [LB713]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Cunningham, so say in Linden Estates, a very upscale neighborhood in the Omaha area. In this particular, if this were passed you would be all right with one of the homes in that neighborhood perhaps putting a very unsightly solar panel on the home, regardless of what the neighborhoods (sic) that moved in that community wanted the look of that neighborhood to be. [LB713]

RICK CUNNINGHAM: Let me answer your question two ways. I would be okay with a resident wanting to put solar panels in some form on their house. I think that the homeowners association would have the right to look at their association and determine what's the best way for solar panels to be installed in their neighborhood. [LB713]

SENATOR SMITH: But help me understand, if it is not addressed in the covenant for that neighborhood, how can they do that if it is not part of that contract? [LB713]

RICK CUNNINGHAM: Well, they can add that into their covenant, the restrictions... [LB713]

SENATOR SMITH: All right. [LB713]

RICK CUNNINGHAM: ...and the definition. It's just that it can't be in the covenant that says you can't prohibit it out of hand. That's what the bill is saying. [LB713]

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SENATOR SMITH: Okay, so what... [LB713]

RICK CUNNINGHAM: But they can put in their restrictions, they can define how you would do it. [LB713]

SENATOR SMITH: All right. So what... [LB713]

RICK CUNNINGHAM: For example, it could say it could not be put as a freestanding element in your yard. It has to be on your roof, it has to be parallel with the roof, and it has to be a certain distance from the surface of the roof, for example. [LB713]

SENATOR SMITH: All right. So just for clarification, what would have to go along with this legislation, if it were passed, in order to have local control at the neighborhood level is that every covenant out there would potentially have to be revised to accommodate this legislation. [LB713]

RICK CUNNINGHAM: Every covenant that had a provision that prohibits solar access. Not every covenant does that. In Overland Park, that example I gave you, my homeowners association did indeed go through a procedure to say, okay, we cannot prohibit the use of other roofing types. But what roofing types would we encourage and what is the design aesthetic that we will basically require for those other types of roofing materials. And we wrote that and we put it in place by a vote of the homeowners association. [LB713]

SENATOR SMITH: Has there been an attempt by the city of Omaha to work with the individual neighborhoods and to work through their covenants to make accommodations for solar panels that are integrated into shingles and to allow those into the covenants? Has there been any other attempt to develop this without having to make it a state law and infringe upon the local control? [LB713]

RICK CUNNINGHAM: We have not at this point, other than the educational outreach that has gone on and continues to go on about the environmental element and the kinds of goals and objectives we have. But we haven't gone to individual land, you know, homeowners associations or developers about that particular point. [LB713]

SENATOR SMITH: All right. Okay, thank you. [LB713]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. Well done. [LB713]

RICK CUNNINGHAM: Thank you for this opportunity. [LB713]

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SENATOR LANGEMEIER: Thank you, Mr. Cunningham. Our next proponent to LB713. Welcome. [LB713]

ROBERT BYRNES: (Exhibit 3) Good afternoon, Senator, members of the Natural Resources Committee. My name is Robert Byrnes, B-y-r-n-e-s. I'm here representing myself and my company, Nebraska Renewable Energy Systems. And I'm here in support of LB713. I believe there should be handouts in your book. If they're not there, you can't find them or whatever, we have additional copies here. We support this bill. And it was actually very exciting to read through the original legislation that this is attached to and modifies. I think this was the original solar access legislation that Nebraska passed decades ago, was truly landmark legislation with a lot of foresight. It saw the technology, maybe not ready then, but they knew it would be ready. They knew there would be an increase of vegetative growth in the upcoming decades, given the vision that they had at that time and, as was mentioned earlier, kind of designed or knew that there would be laws required to control the vegetation growth to allow continued solar access by Nebraskans. So it was very neat to even...we knew that was kind of out there in statute, but this is the first time I'd actually seen it all and read it and it was very inspiring. So we support this bill. On page 2, actually on page 25, lines 18 and 19 of the bill, it talks about unduly impact the solar system. Okay, what are we talking about saying the tree is shading the solar panels? Okay, how is that defined? And the term that's used in the bill is efficiency. And I'm not sure that's the most accurate word that we can use. On page 2, it shows a solar access photograph. And we use solar cameras, have for years routinely in siting solar systems. And on page 2 of my submittal, you can see a solar access picture that's taken. This is actually at my house in Oakland, because I'm putting panels up and I have shade from the neighbor's tree. And you can tell the tree on the north side is the neighbor's tree. And the two green spots on the left and right part of the visual spectrum are my trees. Okay, now if I was to ask the neighbor to trim the trees, that's all we're talking about, if he took ten feet off, five feet off the top of the tree, I'm clear of him. Everything else is on my property. And the use of the solar camera can clearly show the percentage impacts of the potential power production. And I think that's what we're talking about. So that may be a consideration in deliberation that efficiency, because cell, PV cell efficiency does not change based on solar access. It's a fixed amount based on the types of panel or the types of solar cells used in the panel and are generation 12 to 14 percent. So that's not going to change. So I think power production or solar access may be a better term to use there. At the bottom of the page, you can see that this really sharp computer model does the addition for you and calculates that you have 89 percent solar access out of a possible 100. And I estimated this to be close to 10 because there is a little bit of building shading going on here. And I'm not going to tear down the house for the solar panel. On the third page it shows another skyline. And this was recently, this is on a system that was recently installed in Bellevue, Nebraska, the first PV solar in Bellevue, Nebraska, and we ran into the situation. These solar panels that are shown, the solar skyspace is show on page 3. And it was mounted on top of a passive solar addition that

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this couple had put on their home in the seventies. In the meantime, due to, you know, at that time, when that was erected there were no trees to the south face of that addition that probably cost in excess of \$20,000. It's a very nice passive solar addition to their home. In the meantime, the neighbor has not...has allowed invasive species to grow, which now significantly shades the passive element of the house, which is the structural component, and has significant shading as we see even to the rooftop of the solar panel. This one I gave about 30 percent shading. He does have some control over that, as they're in private property and the neighbor is working with them to slowly take those down. Just some other kind of comments here I think on page 26, line 8, it does talk about the private entity or covenant association does have the right to in place design specifications for the system, to outlaw wild colors, shapes, sizes, those kinds of things. So there is still that element of design control in there. Page 26, line 10 refers to licensed contractors must be used to install the solar system. There is no licensing procedure in the state of Nebraska for solar installers. If there were subcontractors involved with a project like thermal solar you'd have a plumber with PV, you'd have an electrician, these would naturally fall to existing statute and licensing requirements. But I would be in favor of such, but as it is right now there are no state standards of specification for the installation of solar panels themselves on roofs. I would suggest that this language be...considered to be changed to be use manufacture recommended racking materials installed with manufacture specifications. And if I might, just finally here, the language on page 26, lines 11 through 14 refers to insurance requirements. And I wasn't exactly sure from the bill who they are requiring that of. I think if the panels are installed on a common element, it makes sense, because some kind of impact or damage to a common element may affect others. If this is a private homeowner, that should be between him and his homeowners insurance policy. And then finally, on page 27, lines 10 through 17, and this is in the handout, there was a requirement for the homeowner or the system owner to provide a warranty statement based on what the condition of the roof is now. And I think that is going to be difficult to obtain for a homeowner on an existing roof. So again, I think that kind of defaults back to that if it is installed properly, using proper equipment that's commercially used in the market, that's really between him and his insurance company, in my view. With that, I appreciate your time and the opportunity to visit with the committee. And I'll be glad to answer any questions. [LB713]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Byrnes? Senator Carlson. [LB713]

SENATOR CARLSON: Thank you, Senator Langemeier. Robert, on the second and third page of what you showed here of the shading, on page 2, and you indicated that at the top is your neighbor's tree there. And it looks like there's two spots there. [LB713]

ROBERT BYRNES: Right. [LB713]

SENATOR CARLSON: Those are to be trimmed back at whose expense? [LB713]

ROBERT BYRNES: I would say that could be negotiated by the neighbor. If I'm going to benefit by topping his tree I should pay, in my view. But really, if you look, you have to have a significant...this is a huge tree that is like 50 feet from my house. Now my roof is third story on this, it's an older house, so it's an old, you know, forties, fifties third story roof. So it's up there too. You see it only affects my solar panels between the hours of 12:30 in the afternoon and 2:00 in the afternoon, only during the months of October, November, December, which are the weakest solar months. Most of the shading that a solar system is going to receive from vegetation is going to happen during the winter months when the sun is very low and the shadows are longer and larger. Those are also months that there's not a lot of solar power. So in this case, in my case, and I'm a solar guy, I wouldn't bother. It's not a big deal; if you're losing two hours of sun in two months of the winter, it's a pretty small impact. But I do have a garden that's between, a vegetable garden in my yard that's between my house and his house and is devastated by the shade of this tree. I have no solar access at ground level due to this tree. I can hardly grow anything in there. So it's been moved to another spot and stuff now, and that's happened over years. But, you know, I'm not worried about it. I'm not complaining to take his tree down so I can grow carrots. But it does...his tree does have a significant impact on the ecology of my yard. [LB713]

SENATOR CARLSON: What about the next then on page 3? Go over that one again. That was... [LB713]

ROBERT BYRNES: Yeah, page 3 is, and this is a significant solar access. The customer did indeed install the panels with the plan of removing the trees primarily along the north skyline. The tree that shows shading on the left side of the photo is his neighbor to the east. And that's a very large tree that's going to be very difficult and probably not...very expensive to remove. So that one is probably staying put. But the beauty of the solar camera and this technology is I can look at that and say, wow, I'm going to get some shading, yeah, there are pretty good solar months, but come 9:30 I'm in the clear. Well, this is a fixed panel and the solar angle from 6:00 in the morning to 9:30 in the morning, again, you're not losing, it's not a terrible impact. The trees along the north skyline, some are on his property and some are on the neighboring property. They are invasive species that have primarily grown up on this property from neglect. The neighbor doesn't have any problem with them removing it, but it's going to be at the system owner's expense. The tree here all the way on the right side, which is the west skyline for the system, is a very large linden tree on the customer's property and he's attached to that one. So, you know, sometimes you can trim them, sometimes you can take them out, sometimes you got to live with it. And unlike wind, with solar technology we can very accurately tell you what's impacting what, when and how much. [LB713]

SENATOR CARLSON: Okay. Thank you. [LB713]

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SENATOR LANGEMEIER: Senator McCoy. [LB713]

SENATOR McCOY: Thank you, Chairman Langemeier. And thank you, Mr. Byrnes, for being here this afternoon. I'm just trying to understand or see if I understand the situation you're talking about on page 2 with your own home. Make sure I understand this correctly. What if I'm your neighbor, and maybe this isn't the case, I don't know, and what if I don't want my tree to be trimmed, the top of it to be trimmed? How does that situation, are you advocating under this bill we would require that neighbor to have that tree to be trimmed if it affects the solar panel? Or am I not understanding correctly what... [LB713]

ROBERT BYRNES: No, I don't think this bill addresses private property or issues between private property owners. I think this bill is primarily looking at trees that are on public right of ways and easements or something that is in kind of more of a common element. It allows the city the right to take them down, however, that should come about as an agreement between neighbors. If the neighbor absolutely does not want to trim that tree, then I don't see that I have the right to force him. However, it was brought up that if a neighbor puts up a solar panel, if your neighbor puts up a solar panel and you don't want him to, you absolutely have the right to impact his ability to put up a solar panel. You can go to the committee, you go to the zoning meeting and get it shot down. And that has happened to me in zoning meetings. Neighbors have a good degree of say as to what you do on your property as far as this kind of a thing. And that's very clearly outlined in most solar and wind zonings that I've seen. I would advocate that a private matter stay a private matter between the property owners. In this particular case if you looked at that tree and how big that was in the south skyspace of where the system would have to be located, you would think it's a devastating shading effect. The camera, when I saw the camera picture I was like, that's not as big a deal as I thought it would be. However, if you have a tree on your neighbor's property that grows up and is never trimmed and gets very tall and large and is within fall distance of your home and potentially damaging your home or features on your property or falling on your car, would you have a right to ask your neighbor, say, you may want to...that tree is looking kind of weak up there, you know, it could come down and hit my house. You think you might want to trim it up? So, I mean, these are issues I don't, you know, they're potential discussion points. I don't know the answers. But, I mean, I guess to answer your question it should be between neighbors if it's on private property. [LB713]

SENATOR McCOY: Thank you. [LB713]

SENATOR LANGEMEIER: Senator Christensen, no longer has a question. Are there any other questions? Seeing none, thank you very much. Well done, Mr. Byrnes. [LB713]

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ROBERT BYRNES: Thank you for your time. [LB713]

SENATOR LANGEMEIER: Further testimony in support, proponents. Mr. Winston, welcome. [LB713]

KEN WINSTON: (Exhibit 4) Good afternoon, Chairman Langemeier, members of the Natural Resources Committee. And happy 2012. My name is Ken Winston, spelled...my last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. And basically, we support the idea of...behind LB713 of removing impediments to the development of solar energy. And we believe that legislation that removes those impediments that are imposed by certain things in housing covenants and what have you are...would be a major step in that goal. But we are suggesting, and I guess there's a little bit of confusion about the tree issue. But I was under the understanding that it was intended to apply only to public property. And so I guess I'm suggesting that we amend it to make it clear that that's what it's intended to do. If that's not the intent, then I guess I misunderstand the bill and would be glad to work with the committee and the introducer on that issue. There are a couple of questions that were raised. And I guess Mr. Byrnes addressed this already, but I guess I want to just reiterate it. That the entity, which would be a homeowners association or condominium association or other entity like that, can impose certain covenants and that includes limited restrictions on the placement of solar energy systems and also requires that it has to require with their...to comply with their design standards. So I think that some of the concerns that have been raised are already addressed by the legislation. With that, I would be glad to respond to questions. [LB713]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Winston? Senator Smith. [LB713]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Winston, step me through that again, how...so the concerns that I raised earlier, I have a covenant in place, I moved into the neighborhood because of the type of covenants, wood shake roof. And I have a neighbor that wants to put solar panels in and it just does not fit in with the neighborhood at all. Tell me how the legislation, as you see it, has addressed that. [LB713]

KEN WINSTON: Okay. As I read page 25, lines 15 through 20, it says, "A private entity may adopt rules that provide limited restrictions on the placement of solar energy systems." [LB713]

SENATOR SMITH: Okay. [LB713]

KEN WINSTON: So they could say that it can't be placed in certain areas. And I believe Mr. Cunningham also addressed that. If they say it can't be out in your yard, then it can't

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be in the yard. [LB713]

SENATOR SMITH: So that's only if that private entity, such as the neighborhood covenant or neighborhood association, adopts that into their covenants, then they can address it? [LB713]

KEN WINSTON: Right, they can address that. [LB713]

SENATOR SMITH: Okay. [LB713]

KEN WINSTON: And then on the next page it says that, "The owner shall first obtain the consent of the private entity." And then the consent shall be given if the owner agrees in writing to "comply with the private entity's design specification" standards which, as I understand it, would also mean that it couldn't be a color that would jump out or what have you that would clash with or something that would...well, I don't know what all design standards, architects know those things a lot better than I do and builders. But basically, the idea would be it would have to comply with those design standards. It would just be, as Mr. Cunningham said, that they couldn't say you can't have a solar panel, period. [LB713]

SENATOR SMITH: All right. So until the covenant addresses it somehow, the neighborhood association addresses it somehow in covenant, there's no restrictions? [LB713]

KEN WINSTON: I think that...I would assume that there would be some design standards that would be in place in the neighborhood association or whatever it is, homeowners association would say you can't have, I don't know, maybe an orange house. I don't know. And that would continue to apply the orange, you couldn't put an orange solar panel either, so something along those lines. And as I said, I'm a little bit out of my league talking about this issue. But I believe that issue is addressed, that's the way I read that. [LB713]

SENATOR SMITH: All right, thanks. [LB713]

KEN WINSTON: Thank you. [LB713]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Well done. Further testimony as a proponent to LB713. Welcome. [LB713]

BRITTANY GIBBONS: Hi. My name is Brittany Gibbons, B-r-i-t-t-a-n-y G-i-b-b-o-n-s. I am a student from New York and I am currently an intern with Robert Byrnes at Nebraska Renewable Energy Systems. And I was interested in this bill because it's in support of sustainability, which is great. And it was...the original bill focused mainly on

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wind and solar. But the revision seemed to exclude wind. I have studied wind power since my freshman year at my college, SUNY Oswego, and so I know that trees and shrubbery do cause wakes and friction which will cause decreased wind power. And it should be considered as part of the bill as well. We did research and we noticed that within 15 meters there was a significant decrease in wind speed compared to an area that was about, say, 30 meters away from trees. So if you have any questions, I will answer them now. [LB713]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, very good. Thank you very much for your testimony. Further testimony in...as a proponent? Seeing none, I have one letter from Dr. Timothy Adams from Omaha in support of LB713. (See Exhibit 5.) Now we'll move to opponents. Is there anyone that wants to testify as an opponent to LB713? Seeing none, is there anyone that wants to testify in a neutral capacity? Seeing none, Senator Haar, you're recognized to close. [LB713]

SENATOR HAAR: Okay. Well, thank you. We will work with the committee to address some of the issues that came up today. Obviously, the intent of this is to say you can't prohibit solar panels. Obviously, there have to be some reasonableness. And also it's my intent that when we're talking about trees we're talking about trees on public property. The one thing we can't control, of course, is who are your neighbors (laugh), and that's often a big part of the problem, no matter, you know, what you're talking about when you own property. So we will work on this. And I appreciate your patience and your very good questions. And now I'm going to go home. Thank you. [LB713]

SENATOR LANGEMEIER: Very good. You have heard the closing on LB713. And that will conclude the hearing on LB713. Senator Haar, hope you start feeling better. We will now move to the next bill on the agenda, which is...Senator Wallman is here, which is LB877. Senator Haar, welcome to the Natural Resources Committee. I think this is the first time. [LB713]

SENATOR CARLSON: Wallman.

SENATOR LANGEMEIER: Wallman, excuse me.

SENATOR WALLMAN: Thank you, Chairman Langemeier. (Laugh) I don't think my name is Haar. (Laughter) But thank you, Chairman Langemeier, members of the committee, glad to be here and good afternoon. My name is Norm Wallman, N-o-r-m W-a-l-l-m-a-n. I represent the 30th Legislative District. And LB877 is simply a disclosure bill. It would require companies that use hydraulic fracturing or a.k.a. fracking to post the composition of fluids used in process. Fracking fluid is pumped down the well under controlled conditions during the hydraulic fracturing process. These fluids consist of about 99 percent water, sand and about 1 percent chemical additives. They are needed to process the releasing of gas trapped in shale rock and other underground formations.

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There are several states that are disclosing on the Web site, FracFocus, and that was my intent with this bill. But there was an error and it was not caught until after the bill was introduced. My staff would be willing to work with the committee staff to correct this error and also to work out any other concerns the committee may have. By changing the Web site to FracFocus I would imagine it would greatly reduce the fiscal note. And this legislation is based on what Texas passed. And they used it on their Web site FracFocus. And I would also like to make it clear that this idea came to me while I was watching the news about a deal in Pennsylvania. And I didn't have a special interest group approach me on it. I just thought we'd be proactive on something on this environmental issue on water. And I believe experts will disagree on whether or not fracking is potentially dangerous to our environment or not. This bill does not prohibit the fracking process. It merely states that if you are going to use fracking, you must disclose the composition of fluids. And thank you. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Wallman? Senator Christensen. [LB877]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. So this would...they'd have to disclose everything they're using as far as in the process? [LB877]

SENATOR WALLMAN: But it would be under our state regulations. It would still be their patent or whatever they have. [LB877]

SENATOR CHRISTENSEN: So it would be private, but it... [LB877]

SENATOR WALLMAN: Yes. [LB877]

SENATOR CHRISTENSEN: ...just discloses to the state,... [LB877]

SENATOR WALLMAN: Yes. [LB877]

SENATOR CHRISTENSEN: ...because a number of companies use different processes and some people have better success than others. [LB877]

SENATOR WALLMAN: Yes, and I respect that. [LB877]

SENATOR CHRISTENSEN: Okay, thank you. [LB877]

SENATOR LANGEMEIER: Senator Schilz. [LB877]

SENATOR SCHILZ: But it would, if I understand correctly though, wouldn't necessarily be...you'd have to put this out on the Web site, unless you can prove that it's a trade

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secret, correct? [LB877]

SENATOR WALLMAN: Yes. [LB877]

SENATOR SCHILZ: Okay. So most of the information, unless you're claiming a trade secret and you can prove that it's a trade secret, would have to go up on whichever Web site it would happen to be. [LB877]

SENATOR WALLMAN: Yeah. [LB877]

SENATOR SCHILZ: Okay. Thank you. [LB877]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for the introduction. [LB877]

SENATOR WALLMAN: Thank you. [LB877]

SENATOR LANGEMEIER: Now we'll move to those that would like to testify in support of LB877. I do have a letter from Duane Hovorka with the Nebraska Wildlife Federation in support of LB877. (See Exhibit 6.) Seeing none, we'll move to opponents, those that would like to testify in opposition to LB877. Come on up. That was a lot of trees for that. (Laughter) Mr. Sydow, welcome back. [LB877]

BILL SYDOW: (Exhibit 7) Thank you, Senator Langemeier and members of the committee. For the record, my name is Bill, B-i-l-l Sydow, S-y-d-o-w. I live in Sidney, Nebraska. And I am able to serve as the director of our Nebraska Oil and Gas Conservation Commission. I'm going to just begin by saying that I work for three commissioners who are individually appointed by the Governor of our state of Nebraska, who are required to be interviewed by this committee and then confirmed by the full Legislature. I appear today in opposition to LB877 since it requires, absolutely requires by law information to be collected in some manner and displayed on our Web site. I'll say that LB877 I believe is not necessary for several of the following reasons. First, it statutorily mandates the collection of very specific data that are transitory in nature, they'll change in the future. And that data could be collected and accomplished by rule or maybe in fact just requested reporting by our commission but at the discretion of my commissioners. Our current statute in Section 57-905, Sections 1 through 12, provides our commission with very broad authority, and currently allows us to regulate the chemical treatment of all wells under our jurisdiction. Since 1959, our commission has regulated safe stimulations through the well permitting process and the completion reporting requirements for thousands of oil and gas wells, resulting in no contamination of water by hydraulic fracturing fluids in our state. And I can say that for the nation as well. The stimulation of oil and gas reservoirs by hydraulic fracturing is in the news, as you all know. I'll tell you it is not a new technique, as has been falsely

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reported by the major news media. The constituents of hydraulic stimulation fluids used in Nebraska are generally safe and can be found under your kitchen sink and in your pantry; we eat it. There have been very few questions raised to our agency. I could name the individuals on one hand, and that comes from the regulated community, from our landowners, surface owners, mineral owners, as well as just the general public. And I believe those questions that we have had have been answered adequately. So we don't believe there are any compelling reasons regarding safety, regarding geological information or regarding petroleum engineering data that would impact and require LB877 to be adopted. So in my tree there, Senator Langemeier, I want to just go through a few of the PowerPoint slides. I've got a map of Nebraska and our surrounding states. And in Nebraska we've drilled over 20,000 wells, but we've produced 5,000 wells, predominantly in...the well count is in the western part of the state. And hundreds, I don't have a count, hundreds if not thousands of those wells have been hydraulically fracture stimulated without any groundwater contamination. The next slide is a cross section of our Denver-Julesburg Sedimentary Basin in the western part of Nebraska. It's an asymmetric basin. On the very top of it in yellow is our Ogallala aquifer, and in this cross section several thousand feet, at least about 2,000 feet, we come to the first producing horizon in the basin, it's called the Niobrara Chalk. We produce gas from the Niobrara Chalk. We have produced oil and gas from the D and J Sands. The Niobrara and the D and J Sands are those reservoirs that have been fracture stimulated through time. Next, in Nebraska we don't have a lot of gas production, but what we do have really exists in two distinct areas--southwestern Nebraska, Senator Christensen's district, we have gas production in Chase and Dundy Counties and Perkins County, just south of the town of Grant. And in Senator Schilz' district, in Deuel County and also my home county now, Cheyenne County, we have natural gas production. All of that production is from the Niobrara Chalk. Every one of those wells has been fracture stimulated and without any problems. One reason there has not been a problem is because we take care in permitting our wells and that reporting data back to us. So I've shown you on the one page what we require on a drilling permit. We look at the cement and the casing designs and what they are going to pump. Then they have to report that back to us on our form 5. And I've shown you one. And on the bottom of that record shows exactly the stimulation record that was pumped. It doesn't have chemicals, but it has volumes, and it has the type of fracturing fluids that are there. So those data are captured generally by myself. I will type those into our database and our computer. And on our Web site currently you can print out a Nebraska Scout Ticket we call it. That's available to the public. This data or the data are there. So I didn't get to my recipe, but the other thing I included there is I've been able to, just for the general public, make some presentations. And so a presentation is there for you for what I showed our Sidney, Nebraska Rotary Club. I've spoken in Scottsbluff, and I'm going to get to speak in Ogallala next week. But that's the kind of things I'm talking to our people about in western Nebraska where we'll maybe have some more play. So any questions? [LB877]

SENATOR LANGEMEIER: Very good. Are there any question for Mr. Sydow? Senator

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Dubas. [LB877]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Sydow. Could you give me a little bit more of an explanation about this FracFocus Web site, and is it something that you're currently using, and how long has it been around? [LB877]

BILL SYDOW: Okay. I'll briefly answer because my associate, Stan Belieu, is here. But we've talked about FracFocus. I'll just say we are heavily involved in FracFocus. Stan is our deputy director. He's the president of the Groundwater Protection Council, national organization. And I'll tell you, Stan is a mover and a shaker behind FracFocus. It was...so it was our intent, if we ever needed to, that FracFocus is the viable way to report this data because our fiscal note that I gave to you, we don't have a way to electronically capture these data if we got them now. It would take a lot of money. So with that said, Stan is going to tell you about FracFocus a little bit later. [LB877]

SENATOR DUBAS: Okay. Thank you. [LB877]

SENATOR LANGEMEIER: Very good. Other questions? Senator Schilz. [LB877]

SENATOR SCHILZ: Thank you, Senator Langemeier. Bill, welcome. Thanks for making the trip. So basically, if what you're showing us here, you're basically doing it already, aren't you? I mean, you're...if somebody is going to do hydrofracking in the state of Nebraska, this scout sheet or whatever it is, it's going to have that information already on there, correct? [LB877]

BILL SYDOW: Yes. On that basic information for volumes, the type of fracture stimulations and so that's always captured. Much of that right there is in text, but the volumes and the type of fluid, we have a place to put that in our database. For our Niobrara fracture stimulations I'll tell you there are just two major kinds, Senator Schilz. One is carbon dioxide and gelled water; the other is gelled water and nitrogen for an energy source. They're very benign fluids. [LB877]

SENATOR SCHILZ: Okay, thank you. [LB877]

SENATOR LANGEMEIER: Senator Smith. [LB877]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Sydow, so from Senator Schilz' question to you, this is a redundant practice that is in terms of the monitoring of the chemicals and so on? [LB877]

BILL SYDOW: No, I don't want to say that, Senator Smith. I'll say we are not collecting the individual chemicals that go into a fracture stimulation. I have availability to them, but we do not collect that to say how many pounds of guar gum that went into that

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fracture stimulation. We know the general recipe. And if somebody asks me I will tell you on the record I can get that data for them. No one has ever asked for this data before. [LB877]

SENATOR SMITH: All right. And then what is being proposed in this legislation, do you see it as having an impact or somehow restricting exploration in the state or what kind of impact would it have on the industry? [LB877]

BILL SYDOW: I think, how do I want to say this? With the legislation, I don't like the legislation because we can accomplish this if we needed to with our current law, current statute. If we needed rules we could do it. I believe I actually could go to our regulated community, alter my form 5 and say, ladies and gentlemen, please include a copy of what you reported to FracFocus. So I think the data are there. I just look at this as a collection of data that will probably never be used again. The purpose for reporting stimulations is so down the road, somebody will know that this well was fracture stimulated, here was the volume of fluid, here's the volume of sand, maybe you can actually calculate and design the length of fractures that you would desire to have. And so from an engineering data or know that from geologically that was the formation that was fractured, we collect that data. But what goes in the fluids, I think fluids change. As Senator Wallman said, we're basically, in Nebraska we're talking about less than 1 percent of the fluid volume that has any chemistry added besides the water. There is the guar, it's a guar made from guar bean, and actually that's in ice cream, that's a food source. We will put some potassium chloride in there. The potassium protects from clays and the damage that swelling from clays. But also I'll just say potassium chloride is a substitute for salt. If people have high sodium problems, they can use potassium chloride, it's in there. There's a borate that helps to crosslink the gel to make it thick. Kids used to play with it, it was called Slime, and that's our gel literally. But the borates are a part of like the Borax 20 Mule Team soaps, borate is in there, so generally very benign. [LB877]

SENATOR SMITH: All right, thank you. [LB877]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. [LB877]

BILL SYDOW: Thank you. [LB877]

SENATOR LANGEMEIER: Well done. Further testimony in opposition to LB877. Come on up. Don't be shy. We're a pretty friendly group so far. [LB877]

STAN BELIEU: It seems to be that way. [LB877]

SENATOR LANGEMEIER: Welcome. [LB877]

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STAN BELIEU: (Exhibit 8) My name, for the record, is Stan Belieu, S-t-a-n B-e-l-i-e-u. And I'm currently the deputy director of the Nebraska Oil and Gas Commission and appear in opposition of LB877. I oppose this for two reasons. The first, it requires the operator or service company to report the chemicals used in hydraulic fracturing treatment, under the current bill, directly to NOGCC, where we have to deal with the data and then take the data and put it out. Part of my presentation, if you go to page 3, is to talk to you about exactly what Senator Wallman is talking about, and that's the FracFocus Web site. As Bill said, I'm currently the state lead on this project. So I spend an enormous amount of time on this and I'm very familiar with all aspects of it. So some of the statistics you can see on page 4 is the number of companies that are now participating in it and the amount of wells that have been reported. This is all since April, 2011, there's almost 10,000 individual wells reported to it. The way that it works, the public can go out to the site and search using GIS to go to a specific well site and find the information on that chemical use. So on page 5, this is the actual spreadsheet, it's a PDF spreadsheet that lists the standard chemicals, what they're used for, their concentration by mass, and these are also disclosed according to the bill under 29 CFR. We just believe that there is a system in place already to do this, so we like the idea of using FracFocus. I also want to tell you about...we also have a system in place, just as you guys have done for us in the past, that allows us to develop our own rules and regulations. And those rules and regulations, we're in the process of doing that now. And one of the things that we're going to look at during this rule-making process is disclosure. That's definitely one of the things. And if we believe it's appropriate for Nebraska to do the disclosure, then we will develop a rule on that. As Senator Wallman was talking about, almost all the oil and gas producing states have now gone to some type of disclosure, even the big, big producing states. So Nebraska being part of that is something we would certainly want to look into. But we want to keep things that are appropriate to Nebraska for Nebraska. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions? I do have one, seeing no others. Can you give me the Web site to this FracFocus. [LB877]

STAN BELIEU: It's FracFocus.org. [LB877]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB877]

STAN BELIEU: Thank you. [LB877]

SENATOR LANGEMEIER: You've done a good job. Further testimony in opposition to LB877. Good afternoon. [LB877]

PHILLIP KRIZ: Good afternoon. Thank you for your time and service to Nebraska and the opportunity to come before you. My name is Phillip Kriz, spelled K-r-i-z, and I'm a

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petroleum engineer that works for one of the largest oil producers in Nebraska, Evertson Operating. I've been working in the oil industry since 1983. I've managed operations in 14 states within the United States, and I've managed hundreds of fracture stimulations in my career, several of those in Nebraska. I'm also in charge of the reporting for our company on hydraulic fracturing. I feel this bill should not be advanced out of committee. I recommend that you should allow the Nebraska Oil and Gas Conservation Commission to handle reporting requirements that this bill might demand through their rules and regulations. The Nebraska Oil and Gas Conservation Commission does a great job of policing the oil and gas industry through their rules and regulations now. And they have the knowledge to do it the best. More detailed reporting could easily be done through our forms that we are already required to do. Hydraulic fracturing is not new to Nebraska. Fracking was invented predominantly in the Wattenberg Basin in the sixties, and has been done in Nebraska since the sixties. That's over 50 years in Nebraska alone. There has been thousands of wells that have been hydraulically fracked without one complaint filed to the Oil and Gas Conservation Commission. So I feel that you guys have a lot of pressing bills to work on. And I think you have a great agency in this state to work with, and that you should push them to work through their rules and regulations, which they modify periodically anyway for disclosure and stuff. And I don't think it's necessary for you guys to push this bill forward. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much, appreciate your testimony. [LB877]

PHILLIP KRIZ: Thank you. [LB877]

SENATOR LANGEMEIER: Further testimony in opposition. Almost skipped you. Good afternoon. [LB877]

DARWIN PIERSON: Good afternoon, gentlemen. I don't have a lot more to testify... [LB877]

SENATOR LANGEMEIER: Got to start with your name. [LB877]

DARWIN PIERSON: Pardon? [LB877]

SENATOR LANGEMEIER: Got to say and spell your name. We got to start there first. [LB877]

DARWIN PIERSON: Oh, okay. Darwin Pierson, P-i-e-r-s-o-n. And I represent NIOGA, which is Nebraska Independent Oil and Gas Association, which takes up most...most of the members are operators in the state of Nebraska. And they fully agree with the commission that there is not any further use for a bill such as this. Everything is being

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taken care of at the present time. And we have not had any complaints in that respect. Thank you. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Pierson? Senator Schilz. [LB877]

SENATOR SCHILZ: Thank you, Senator Langemeier. Sir, thanks for coming in. And this is just for my information, do you know how many wells in the state of Nebraska your organization represents? [LB877]

DARWIN PIERSON: Well, we basically represent all of them in the state of Nebraska. I can't give you a number, I'm sorry. [LB877]

SENATOR SCHILZ: Okay, that's fine. No problem. But it's everybody that's basically in the oil business is in that. [LB877]

DARWIN PIERSON: Yes, right. [LB877]

SENATOR SCHILZ: Thank you very much. [LB877]

DARWIN PIERSON: Thank you. [LB877]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. Further testimony in opposition. Good afternoon. [LB877]

MIKE CARR: Good afternoon. My name is Mike Carr, C-a-r-r. And I'm a graduate petroleum engineer from the Colorado School of Mines. I graduated in 1957. I am still working in the oil and gas business after some 55 years. I know that...I was fracking wells in west Texas in 1958, and I know it started before that. So I know it's been going on a long time. And I guess one of the things you may want to ask yourselves is, what problems have you heard of in Nebraska as far as this procedure is concerned. And is it really a problem or maybe it's kind of a thing, if it ain't broke, don't fix it. I think that the Nebraska Oil and Gas Commission, of which at one time I served on the commission for a while. And I think they do an excellent job of monitoring not only this procedure, but all completion procedures and drilling procedures that take place in this state. I worked in Nebraska for a long time and still do. I lived in McCook, Nebraska from 1961 to 1993, some 32 years, and have quite a bit of experience in this field. The other thing that concerns me about it is there's a part of the state that utilizes hydraulic fracturing and part of the state that doesn't. And most of the stuff that's in what they call the, can't think of the word right now, but anyway, what I'd call the southwestern part of, like say, Red Willow County, Hitchcock County, Dundy County, those completions use acid. And again, that hasn't caused any problem. But I think one of the slippery slopes of this whole thing could be that you go ahead and, you know, they pump cement into wells.

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And you could be trying to regulate things that you really don't intend to do it. I can't see where I would say that fracturing and acidizing are the same thing, because you don't put any sand in the acid jobs. But that's something that I think you need to worry about as far as what you finally come up with if you pass such a bill. Any questions? [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Carr? Seeing none, thank you very much for your testimony. Well done. [LB877]

MIKE CARR: Thank you. [LB877]

SENATOR LANGEMEIER: Further testimony in opposition to LB877. Welcome. [LB877]

BRIAN BLOME: Welcome to you too. Thank you for taking the time. My name is Brian Blome, B-I-o-m-e. I'm currently an independent oil and gas geologist, putting prospects together in the...primarily the Panhandle region of Nebraska. I've been working in the industry for 37 years, and which would encompass the tri-state area of Nebraska, Wyoming and Colorado. And we refer to that as the Denver-Julesburg Basin. Regarding LB877, as a geologist and someone who causes wells to be drilled and completed, I don't see the need to enact legislation for disclosure. I, personally, don't have any problem with transparency, of telling people what happens with a frack or a completion process in a well. But I don't think we would need to go to the extent that you might go through to get the same results that you would get if you just simply allow your commission, which you already have in place, to either revise or change their rules and their regulations. They are very capable and have done an excellent job of overseeing, regulating and protecting all concerned, mineral owners, drillers, independents and oil companies. In conclusion, the very fact that we are here discussing this matter suggests to me that there is a bigger issue. For reasons I don't understand or at least fully understand, we have been made to believe that the oil industry is the enemy. Instead of protecting and encouraging an industry that is essential to our fundamental daily lives and well-being, we instead seem to be trying to stifle it. Believe me, drilling, completing and if need be fracking oil and gas wells and then refining and putting it in a pipe and bringing it to us to fuel, literally fuel our daily lives, is not a bad thing, it is a good thing. The American oil industry is a marvel. Its successes and achievements deserve our celebration and national pride. Generations of engineers, geologists, land men, surveyors, entrepreneurs, business leaders, inventors, entrepreneurs, they've done an outstanding job to overcome daunting physical and logistical challenges. They've done their damndest to overcome everything that could possibly be in their way, immeasurable odds. For the foreseeable future, oil is the cheapest and easiest energy source. Let's not discourage it, but rather encourage it. Thank you for your time. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Carlson. [LB877]

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SENATOR CARLSON: Thank you, Senator Langemeier. Brian, thank you for your testimony. Appreciate it. I agree. I think I agree with everything you said. Where did the concern or danger come from that fracking is bad and we shouldn't do it? [LB877]

BRIAN BLOME: Well, I think it's primarily kind of a witch hunt that I feel has come from the media. They have been, for lack of a better word, brainwashed into thinking these things are bad. And we seem to have a stigma that the oil and gas industry is evil. And, yes, there's probably been places on the globe where fracking or treating of oil and gas wells has resulted in pollution. I mean, we've all seen that in the news where wells are lost, out of control. But the percentages of these kind of things in the overall perspective of the numbers involved is very, very minor. And so I guess a few bad apples sometimes can spoil the whole bushel. But other than that, I really don't know why there is such a false perception. [LB877]

SENATOR CARLSON: Thank you. And in your opinion, you'd label it just that, a false perception of danger? [LB877]

BRIAN BLOME: Yes, I do. [LB877]

SENATOR CARLSON: Okay, thank you. [LB877]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much for your testimony. [LB877]

BRIAN BLOME: Thank you. [LB877]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome. [LB877]

DAN BLANKENAU: Hello. Thank you. My name is Dan, D-a-n Blankenau, B-l-a-n-k-e-n-a-u. And I don't have a lot more to add. But you heard from the largest producer of oil in Nebraska, and I'm one of the smallest producers in Nebraska. I operate 35 or so wells in southwest Nebraska. And I just want to echo how I feel, that the commission is doing a very adequate job right now of keeping tabs on what we're doing out there. When I first read the legislation I actually thought, well, there's nothing new here. I mean, there is very little new that they're asking us to do in this proposal. And so I thought, well, what is my stance on it? And I decided, well, I should be opposed to it because it's making law when I don't think it's really necessary, it's already in place. So with that, that's all I have. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Schilz. [LB877]

SENATOR SCHILZ: Thank you. Thank you for coming in. Back on kind of what you

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said, you know, you don't want to see a law put in place that doesn't need to be there. How much of an issue are regulations to what you do every day? [LB877]

DAN BLANKENAU: Well, it's somewhat of a burden. I don't consider it an overload, though, to our industry. I think it's a pretty fair process. When we have a spill we have to address it. And if we're late on reporting fluid levels in a well then we hear about it and we get those reports out. And for the most part I think it's...the process as it is, is very fair. And if we are going to do something out of the ordinary, position a well somewhere where it's not the customary process or placement, you know, we hear about it and we have to discuss it with the commission. And we have sundry notices that we report. So, yeah, there's a burden, but it's not an undue burden, it's very user friendly I think. [LB877]

SENATOR SCHILZ: So basically, from that I take that your opposition to this bill is the fear of more regulation becoming more burdensome and possibly causing you more issues in the future that don't really need to be there? [LB877]

DAN BLANKENAU: Well, quite frankly, not really. That doesn't really pertain to me much because I won't do that type of hydraulic fracking. But no, I guess my opposition to it is more that it's already done. I mean we would be...I expect that if I were to do a frack job I'd be reporting pretty much the information that is required in the bill. [LB877]

SENATOR SCHILZ: Okay. Thank you. [LB877]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Further testimony in opposition. Welcome. [LB877]

JULIE WAMSLEY: Good afternoon. My name is Julie Wamsley, W-a-m-s-l-e-y, and I live in Sidney, Nebraska. And I do not think that LB877 should be approved because it isn't necessary. I grew up in Kimball, Nebraska and my grandfather and father were both in the oil business and I currently am myself. We had an oil field inside the city limits of Kimball. And I think a lot of those wells were stimulated by hydraulic fracturing. Until just a few years ago, Kimball got most of its drinking water from water wells that were close to the oil field. And our water was never contaminated by oil field operations. I'm a mother of four and I'm concerned for the health of our children. However, this bill addresses something that is not a problem and probably never will be. And I don't think it should be approved. I believe this is another example of overregulation. And thank you for allowing me to testify. [LB877]

SENATOR LANGEMEIER: Well done. Are there any questions? Seeing none, thank you very much. Well done. Further testimony in opposition. Welcome. [LB877]

BRUCE EVERTSON: Good afternoon, Senators. My name is Bruce Evertson. I'm from

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Kimball, Nebraska. [LB877]

SENATOR LANGEMEIER: I need you to spell it. [LB877]

BRUCE EVERTSON: E-v-e-r-t-s-o-n. I've been in the oil and gas business most of my life. And we've grown to be the largest producer in Nebraska for the last number of years. I'm totally against this bill and I'll tell you why. I think it's total more regulations. Our industry, I disagreed a little bit ago, our industry is regulated to death. And we already have rules. The major service companies, the Halliburtons, the B.J.s of the world, have already said they're willing to disclose. I'm not against disclosure, but I think this is just more regulations. And if you get outside the state of Nebraska, which you all are not concerned too much about, but you get on federal Indian land and you can't believe the regulations we have to live with. I probably have been exposed to more frack jobs than most people alive. I've had as many as 18 rigs working in 14 or 15 states and three foreign countries and there was hardly a day in my career that we weren't fracking a well somewhere and sometimes numerous wells at the same time. And to this day we have never...I have never had one report that any of them went bad. So for this to be a law when we already have our own police force, basically, the Oil and Gas Conservation Commission, all I see this is a new law that something else can be attached to it next year for more regulations. As I say, I'm not against disclosure at all. In fact, a lot of the frack jobs that I've been on, on our own wells we have always had a company policy that we invite the landowner, surface owners, whatever, to come out to the job, to come into the vans with us. And I've always had frack crews bring in the frack fluid, they come in, in different containers. You pour it back and forth, people feel it, you see what it feels like. It's a slick jelly before there is sand put in it and after. And so people can know it's not like we're trying to hide anything. And there's never been a case of a problem anywhere. So I don't see why you would want to pass a state law to cause just more regulations. And that's what we've run into everywhere we go in this country. And to answer your question of why, Senator Carlson, I serve on quite a few committees in the oil and gas industry. The last couple decades your biggest plays in America were discovered on federal lands. And the environmentalists were able to go back to Washington and buddy up to their buddies and get regulations to slow the permitting process down to a crawl, sometimes not at all to get wells permitted. Well, this last decade, especially the last five or six years, the biggest plays in America from North Dakota, south Texas, New York, Pennsylvania has been on feed land. So that process doesn't work. So they have to go out and start something so it's fracking. Fracking is a bad word. It's going to turn your hair purple, everything is bad with it. Well, it's not bad. I've been doing it since the mid-sixties and I've never seen any of it ever go wrong. I was in California last week at a new club that I belong to, and I was cornered by a bunch of the new members because they wanted to know about fracking. It's all over the country. They've done a really good job of frightening everybody about fracking. But a lot of people that are frightened about it and talk about it and put it on the news have never been on a frack job. And like I said, I challenge, hardly anybody

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walking has been on more frack jobs than I have. And I've never seen one contaminate anything. So that's why I'm against it. So I'd welcome any questions. [LB877]

SENATOR LANGEMEIER: Good. Are there any questions? Senator Smith. [LB877]

SENATOR SMITH: Thank you, Senator Langemeier. Mr. Evertson, thank you for coming and testifying. And you know, I understand the cost of overregulation. I understand that there's a cost to business and that that's a problem. But what I'm hoping to try to get at through the testimony, and I had asked Mr. Sydow earlier and maybe you're a better person to answer this. For the casual observer, they may look at this proposed legislation and say, so what's the big deal of providing a little bit more information? [LB877]

BRUCE EVERTSON: Um-hum. [LB877]

SENATOR SMITH: What can it cost? What can it harm? And I'd like for you to, to the best of your ability to just, and Senator Schilz was touching on this a little bit earlier I think with his line of questioning is, what is the cost of this additional regulation to your business and to the industry in terms of...I understand disclosure, permitting delays, cost of business. Is there a risk to there being a barrier to more production, to more exploration? What is the cost to society or to your business and then to society of this type of additional regulation that's not necessary? [LB877]

BRUCE EVERTSON: Well, Senator Smith, what I look at is as you heard the testimony from your own Oil and Gas Conservation Commission that they can put this rule in place today without passing a new state law. It can be on when we get ready to drill a well or complete a well, we have to fill out certain permits. They can add that to it and we can already do that. It doesn't...what bothers me about having a new state law, what's going to be attached to it next year? That's the problem. It's not...sure, all this regulation takes more and more time. Nebraska is probably one of the easier states to work with because we have very little federal land or Indian land. When you get in that mix then you have 15 different pages of permits every month that are redundant, none of them are the same, for different agencies. I mean, it's ridiculous. But no, to answer your question, it's not that big a deal, but you already have it. That's my testimony, we already have it. And they can attach it to the permit, the completion permit, or the sundry notice, whatever we're going to do, to disclose because as I testified earlier, and I don't know why they did it, but the major service companies have already decided not to fight this thing. Halliburtons, the B.J.s of the world, to go ahead and disclose what they use, and to me it's like you're passing a law to make all steak houses put out their formula...the recipe for their steaks. So the EPA says it ain't going to hurt you. You know. But they went ahead and did it. So that's not an issue. So when we get done with the job we can attach that to the ticket, send it in. We already have it. We don't need a state law to do this, that's what I'm getting at. [LB877]

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SENATOR SMITH: All right. Thank you. [LB877]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, well done. Thank you very much for your testimony. [LB877]

BRUCE EVERTSON: Thanks, folks. [LB877]

SENATOR LANGEMEIER: (Exhibits 9-11) Further testimony in opposition? Seeing none, I have a letter from P.A. Brew with Central Operations, Inc. in Denver; I have a letter from Jim Pryor with Wildcatter; and I have one from Randy Ward with Alfred Ward and Son in Ogallala. Those three are in opposition to LB877. Seeing no other testimony in opposition, we go to neutral. Is there anyone that would like to testify in a neutral capacity? Welcome. [LB877]

JILL BECKER: Good afternoon, Senator Langemeier and members of the committee. My name is Jill Becker and I'm here today as a registered lobbyist for Black Hills Energy. And I just thought I would make a few comments that haven't been made yet. We're appearing in a neutral capacity today because in most of the states where we do our fracking we already disclose a lot of what this bill would be trying to do. Black Hills appreciates the importance of this issue to our citizens and elected officials. We have been using fracture stimulation for over 35 years as both a...in oil and gas wells. We have drilled in Wyoming, Colorado, Nebraska, and the greater Rocky Mountain region. And we have never had an incident where our frack jobs have caused a negative impact on drinking water or the environment. We have been a supportive participant in both the Wyoming and the Colorado rule-making process that has looked at this issue. And we strongly encourage you to look to our regulatory body, the Oil and Gas Commission, to address the concerns that you've got. We really think that that is the best way to address stakeholder concerns and to respond to the issue. You've heard a couple of testifiers say if you pass legislation like this you will potentially have legislation coming back on a frequent basis to disclose something else that people want to know about, or to...just whatever. You're going to have a lot of legislation tweaking that law if you pass it. If you do it through the regulatory model, we think that that body can be more responsive to whatever changes that there might be in the industry and still give those who are interested an opportunity to voice their concerns. We are familiar with the FracFocus Web site that has been mentioned a couple of times. And that is where we put our disclosure information is on that Web site. And as a company, we do that on a voluntary basis regardless of what our states require. We've made that decision as a company. So with that, I'd be happy to answer any questions that you have. [LB877]

SENATOR LANGEMEIER: Very good. Are there any questions for Ms. Becker? Oh, Senator Smith. [LB877]

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SENATOR SMITH: Thank you, Senator Langemeier. So in your neutral testimony, when you're looking at the potential risk of this type of legislation it is that it becomes a potential gateway to further regulation that could be a cost to the industry and could cause restrictions on further exploration or development? [LB877]

JILL BECKER: Sure. I mean, I think a lot of the intent of this bill, as you've heard today, is already being accomplished by the Oil and Gas Commission. And you've also heard a lot of companies are already doing the disclosures voluntarily. And I think you should really move it through the regulatory body rather than you as legislators trying to determine what technical aspects of this regulation you decide that you need. [LB877]

SENATOR SMITH: All right. Thank you. [LB877]

SENATOR LANGEMEIER: Senator Schilz. [LB877]

SENATOR SCHILZ: Thank you, Senator Langemeier. Just one quick. As we've seen in other issues that go on, it seems to me that we, you know, as people have said, this seems to be more of a national issue, if not a global issue that we're dealing with. And a lot of times, and in your opinion, do you think that as these bills come forward and as bills like this are passed, do they add to that sensationalism and hype about, well, geezers, look, the state of Nebraska just passed something, there must be an issue here. Do you think, is that part of what we're dealing with? [LB877]

JILL BECKER: You know it certainly could be. But, you know, I would say in our state we already have a framework for addressing this issue. That's not necessarily the case in every state. But, you know we've seen both the legislatures act as well as regulatory bodies. So, you know, there's precedent for each of them acting. But I think in a lot of the states where you already have oil and gas exploration and production they have a pretty good handle on the environmental concerns that, for whatever reason, have really hit the press a lot lately. So, you know, I would say here we've already got the framework in place where that's not necessarily the case in every state. But it tends to be the case in the states that already have oil and gas. [LB877]

SENATOR SCHILZ: Okay. Thank you. [LB877]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB877]

JILL BECKER: Thank you. [LB877]

SENATOR LANGEMEIER: Further testimony in a neutral capacity? Seeing none, Senator Wallman, you're recognized to close on LB877. [LB877]

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SENATOR WALLMAN: Wow. Thanks for hearing this testimony. I keep hearing they could do it now, so why not. And FracFocus had 127,518 hits on its Web site. But the reason...and New York has a moratorium on it until the EPA rules. And if that doesn't scare the oil people, it should. And Congress has proposed legislation that as a state we can have the federal government do it under the Clean Water Act, or we can do it. So I think...I'm not trying to shut down the oil business here. I think we ought to be proactive and get something to help them. And I figure this should help them and should help us as a state. And overregulation, that's part of life, EPA, stuff like this. But if we have something that we can live with and they can live with and my LA is willing to work with you and I'm willing to work with you if you have something...you have ready concerns about this. And with that, thank you for hearing it. [LB877]

SENATOR LANGEMEIER: Very good. Thank you, Senator Wallman. With that, that concludes the hearing on LB877. We'd like to thank everybody that testified. We'll move on, now we'll, Senator Schilz, to LB873. Welcome, Senator Schilz. And you're recognized to open on LB873. [LB877]

SENATOR SCHILZ: Thank you, Chairman Langemeier. Members of the Natural Resources Committee, my name is Ken Schilz, spelled S-c-h-i-l-z. And I represent the 47th Legislative District. I introduced LB873 in order to extend the date for eligible claims under the Petroleum Release Remedial Action Act by four years, to June 30, 2016. The Petroleum Release Remedial Action Reimbursement Fund was established to help pay remediation costs for owners and operators of facilities that have leaking petroleum tanks. The need to access this fund and the reason for its creation in the first place comes from the inaccessibility of insurance for owners and operators of petroleum tanks. When contamination has been found at a site, the Nebraska Department of Environmental Quality has determined that investigation and/or cleanup is required. The agency will determine the responsible persons who may be eligible for reimbursement through this fund minus a deductible. NDEQ must then approve the eligible activities. The date extension for this fund has come before the Natural Resources Committee every four years for many years because there is still an extensive backlog of claims and cleanup obligations. We have had a little bit of confusion with the effective date of June 30 and the emergency clause. I would just say now that the emergency clause is not necessary. However, there is a representative from the Nebraska Petroleum Marketers here that will be able to address that and answer those questions. And the committee can amend any changes that need to be made at their discretion on that date. So I ask for your support of LB873. And I will be happy to try to answer any questions you may have. Thank you. [LB873]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Schilz? Seeing none, very good. You have heard the opening on LB873. We'll now take testimony as a proponent or in support of LB873. Mr. Whitehead, welcome. [LB873]

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MARK WHITEHEAD: Thank you, Senator Langemeier, members of the committee. My name is Mark Whitehead, that's M-a-r-k W-h-i-t-e-h-e-a-d. And I'm here in favor of the TransCanadian Keystone Pipeline, no wait a second, that was two months ago. (Laughter) That was a couple of months ago. No. This is something that is much closer to my everyday business. I think in fact actually in one of my last testimonies I gave you a little bit of a history on the need for regulations on the Underground Storage Tank Fund and where that exactly evolved. Again, prior to 1980 or so, it really wasn't much of an issue. As the United States and around the world became serious about environmental concerns, all of a sudden, towards the mid-eighties we weren't going to...the United States government wasn't going to take care of leaking underground storage tanks at that point. They were going to clean up the entire history of the industry's problems in a very short period of time. So from roughly about '84 up until about 1990 or into the early nineties it was, I think I described this last time as kind of the wild, wild west, where there wasn't any kind of insurance available, was like insuring a burning building, it was an open checkbook for the Department of Environmental Quality in terms of cleanup. There wasn't a definition of what "clean" was. In fact, the restrict...the requirements were frankly to deliver the piece of ground cleaner than it was prior to the leak to begin with. There wasn't a standard involved with that. So then the EPA came out with regulations of financial responsibility that became the parameters for the LUST Fund. And that in essence was the owner-operator of the tanks were responsible for, needed to show insurance or coverage of financial responsibility for the first \$1 million. And that was the nexus or the beginning of LUST Funds around the country. And that, of course, as you all know, has been funded by a fee that all owners and operators pay. It's nine-tenths of a cent on gasoline, three-tenths, I think, on diesel. For a "marketership" like ours that represents about \$400,000 a year that we pay into this fund. The only way I can look at this is as basically my insurance payment. So that is a hefty insurance payment to do that. It is something that is disbursed across the entire industry. It has dealt with an issue that has been extremely important to our industry and to the United States. And so that's pretty much where we have always been. The problem is now, how do we get out of this relationship? And since 1998 all underground storage tanks that were considered an issue have been replaced. And so anything that has been installed since 1998 hasn't been the real issue. And so we've been working with a backlog through that process. And the backlog has continued to come down. Again, the exit strategy, the way I look at it, becomes we can't pay private insurance and also pay the fund insurance at the same time. So I think the catalyst for getting out of the relationship is in fact the depletion of the backlog. Once that happens, because to do otherwise, what a petroleum marketer and owner of a tank would expect, of course, is tanks that wouldn't have private insurance on it. We would need to fund that private insurance as opposed to funding the LUST Fund. If people are exempted on particular sites and you had some over here and some over there, then that becomes problematic in terms of implementation. And so it probably isn't good for either one. I think what's going to be the catalyst again for getting out of the relationship is the depletion of the backlog. A couple of times over the course of the last several years, the

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LUST Fund has been...funds have been borrowed from it (laugh) that I wouldn't expect to be repaid back from the Legislature. And so I think until this gets resolved, you know, I would say protect the fund, let's work on the backlog. And I think we're working ourselves towards a sunset. And I think that is consistent with Senator Schilz' bill. And in fact, we thank Senator Schilz for bringing this forward. But I think...again, I think the end is near. But we're not quite there yet. And I think that's going to be dependent upon the backlog as determined by the Department of Environmental Quality, or managed by the Department of Environmental Quality. My red light is on. Any questions? [LB873]

SENATOR LANGEMEIER: Are there any questions? Senator Carlson. [LB873]

SENATOR CARLSON: Thank you, Senator Langemeier. So, Mark, what do you think it is in terms of time? If the money keeps coming in, what are we talking about? [LB873]

MARK WHITEHEAD: I don't know. I think the four years would certainly cover it. But I think, you know, from our industry's perspective, if in fact the catalyst for it is there prior to that, I don't really see that I'd have a problem with it in terms of us coming back. But we're not there right now. As we continue to get sites moved up the list, it seems as though some of the problems...one of the things that they have discovered is that the problems that they were anticipating due to a variety of reasons hasn't been nearly as extensive as what they were expecting. So while I think there's a few, over 1,000 sites on the list that will be activated over the coming years, I think that will go fairly quickly. And so I don't...as I stated earlier in my testimony, I don't see this as a complete revolving door. But I think this will give us, Senator Schilz' bill will give us the latitude to get there. And I would be optimistic that I think the four years would do it. And again, I think that...the backlog needs to be the primary catalyst on this thing, principally because it's problematic from a variety of perspectives to have some sites on, some sites not. And as you can appreciate, \$400,000 a year is expensive insurance. But it's leveled, you know, equally across the board. And so, you know, to all my competitors and to us and we recognize there's an issue and a problem. And we would be anxious to not have to pay the \$400,000. I'm sure we could probably get private insurance for less than that. But what we can't do, what Whitehead Oil Company can't do is pay both the \$400,000 and the private insurance as well. Does that make sense? [LB873]

SENATOR CARLSON: One other question. This is renewed for...this renews it for four years, removes the sunset date for four years. So if the problem were cleaned up in two, would you be agreeable to the money the last two years going into our fund to fight those animal rights groups that want to destroy animal agriculture in Nebraska? [LB873]

MARK WHITEHEAD: I would be opposed to that. [LB873]

SENATOR CARLSON: Oh, you would be? Okay. [LB873]

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MARK WHITEHEAD: (Laugh) No. And obviously, this is paid by the industry for industry issues. And somehow I think you knew that, but that would be our position. [LB873]

SENATOR CARLSON: Just thought I'd ask. [LB873]

MARK WHITEHEAD: All right. [LB873]

SENATOR LANGEMEIER: Any other questions? No other questions? Thank you very much for your testimony. [LB873]

MARK WHITEHEAD: Senator, thank you very much. [LB873]

SENATOR LANGEMEIER: Any other testimony in support of LB873? Good afternoon. [LB873]

ED WOEPPEL: Thank you, Senator Langemeier and members of the Natural Resources Committee, my name is Ed Woepfel, and that's E-d W-o-e-p-p-e-l. And I'm here today representing the Nebraska Cooperative Council which is a trade association for the farmer-owned cooperatives in the state of Nebraska. We are very fortunate to maintain about 96 percent of those farmer-owned cooperatives as our members. In terms of our support, I'm here to testify in favor of the bill. And we think this is a logical extension to a program that has worked very well for the state of Nebraska and for our members specifically. Mr. Whitehead has done a good job I think of laying out some of the history and where this process is going. So I won't reiterate that kind of material. But if there are any questions, I'd certainly try to answer those for the committee. [LB873]

SENATOR LANGEMEIER: Very good. Are there any questions of Mr. Woepfel? Seeing none, thank you very much for your testimony. Well done. [LB873]

ED WOEPPEL: Great. [LB873]

SENATOR LANGEMEIER: Further testimony in support. Seeing none, is there any testimony in opposition? Or are you still support. [LB873]

LORAN SCHMIT: No, I'm in support, Mr. Chairman. [LB873]

SENATOR LANGEMEIER: Support. Welcome, Loran. [LB873]

LORAN SCHMIT: (Exhibit 12) Thank you, Senator. I have copies of testimony here to be distributed to the members of the committee. And my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear here today in support of LB873, introduced by Senator Ken Schilz. I'd like to give the members of the committee some history on this program. The original bill which established this program was passed in 1986. In 1989, LB289

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established the fund which today we are discussing. And at that time there was a tax of 1 cent, one-tenth of a cent on diesel fuel, and three-tenths of a cent tax on gasoline to support that fund. That amount has been increased several times, the present level of three-tenths of a cent per gallon on diesel fuel and nine-tenths of a cent per gallon on gasoline. I believe the last time it was raised Senator Bromm brought that bill to the Legislature. So there has been a history of increased recognition of the need for the support of this fund. The fund at this time has reimbursed cleanup costs of approximately \$120 million. An additional \$35 million has been spent to clean up what the department calls "orphan sites," which are sites for which no one can be held responsible. Approximately another \$5 million has been spent under a special program called "Pay for Performance," where contractors enter into a special arrangement with the agency for a specific cleanup project. And it was determined by the Legislature and the introducer of the bill back in 1989 that a public interest was served by the cleaning up of these sites. The Legislature recognized that some of the sites would not be cleaned up because no one really owned them anymore. The Legislature also recognized that some of the sites, particularly in the smaller communities where they had a limited amount of utilization, the owners would not be able to afford the cleanup. And the costs of the cleanup in some instances was not proportional to the amount of gasoline that was sold at that site. So the Legislature determined that there needed to be some recognized responsibility and continued responsibility to continue this arrangement. Since the establishment of the program, more than 7,000 sites have been identified. Of that amount, 5,200 have been closed, which means that no further work is needed at that site. In addition to those known sites, the department averages 20 to 25 new sites per year which need to be cleaned up. The department has discovered buried tanks of various sizes throughout the years. In two instances, an entire railroad tank car has been located as an underground tank. Most recently of interest that such a tank was located in the Haymarket area here in Lincoln, Nebraska. Senator Schilz' bill extends the program for another four year. The department estimates that they will need at least \$100 million to cover costs for that period. I believe the agency under the supervision of each director since 1989 and a specific direction of Mr. David Chambers have performed an excellent service. I want to commend Mr. Whitehead as a member of the Environmental Quality Council, as the chairman, for the work that the agency has done. And it's a low profile agency, there's not a lot of glamor involved in cleaning up an underground tank site, but it's something which needs to be done, and they've done it very well and very efficiently. I believe now, as I did during the late eighties, that a contribution by the motor fuel users was and is the proper method to fund the program. Without that method of support, many of the owners of contaminated sites would not have been able to afford the cleanup costs. And the result might have been continued contamination of soil and underground water. As a member of the public, I know that we are prone to criticize government when government failures occur. As one who has watched this program from the beginning, I want to congratulate the agency and its personnel for excellent performance. I would be glad to answer any questions. And thank you. [LB873]

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SENATOR LANGEMEIER: Very good. Are there any questions for Senator Schmit? Seeing none, thank you very much. Well done. [LB873]

LORAN SCHMIT: Thank you. [LB873]

SENATOR LANGEMEIER: Further testimony in support? Seeing none, now we'll move to opposition. Does anyone want to testify in opposition? Seeing none, is there anyone that wants to testify in a neutral capacity? Seeing none, Senator Schilz, you're recognized to close. Senator Schilz waives closing. That brings us to the end of the hearing for LB873 and our hearing schedule for the day. We'd like to thank everybody that came to participate. And we appreciate it. That's what makes this process go forward. And that concludes our hearings for the day. Thank you. (See also Exhibit 13.) [LB873]